

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Implementation of the Non-Accounting)
Safeguards of Sections 271 and 272 of the)
Communications Act of 1934, as amended)
)
and) CC Docket No. 96-149
)
Regulatory Treatment of LEC Provision)
of Interexchange Services Originating in the)
LEC's Local Exchange Area) DOCKET FILE COPY ORIGINAL
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**COMMENTS OF THE ASSOCIATION
FOR LOCAL TELECOMMUNICATIONS SERVICES**

Pursuant to the Public Notice released July 18, 1996, in the above docket ("Section 272 NPRM"), the Association for Local Telecommunications Services ("ALTS") hereby offers these comments on the Commission's proposed non-accounting safeguards under Sections 271 and 272 of the Communications Act of 1934.¹

**I. ANY USE OF THE BOCS' OFFICIAL SERVICES NETWORKS BY AN
INTERLATA AFFILIATE MUST BE PROPERLY CREDITED TO THE BOCS'
LOCAL AND INTRALATA OPERATIONS, AND DISBURSED TO RATEPAYERS.**

ALTS supports and applauds the Commission's proposed non-accounting safeguards concerning BOC entry into in-region interLATA service, manufacturing, and other activities. However,

¹ ALTS is the non-profit national trade organization representing competitive providers of local telecommunications services. ALTS' membership include over thirty non-dominant providers of competitive access and local exchange services which deploy innovative technologies in many metropolitan and suburban areas across the country.

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ALTS respectfully submits that these safeguards should expressly address the use of the BOCs' "Official Services Networks" by an interLATA affiliate.

As the MFJ court explained in 1983 (Western Electric v. United States, 569 F. Supp. 1057, 1098 ("Official Services Networks Decision")), these networks provide:

"communications between personnel or equipment of an Operating Company located in various areas and communications between Operating Companies and their customers."

Although the original Plan of Reorganization proposed divesting the Official Services Networks to AT&T, since they operate between LATAs, the District Court, agreeing with BOC contentions, gave these networks to the BOCs instead because (id. at 1099):

"The Operating Companies are prohibited from engaging in intercity, inter-LATA services in order to prevent a recurrence of the alleged anticompetitive practices of AT&T, which was claimed by the government to have used its local monopolies to disadvantage its intercity competitors in a variety of ways. That rationale is wholly inapplicable to the provision of inter-LATA service by each Operating Company for its own internal, official purposes."*

* The Operating Companies are prohibited from providing inter-LATA telecommunications services under the decree for two reasons: the possibility of discriminatory interconnection practices and the possibility of subsidization of interexchange services with revenues from local exchange services." (Emphasis supplied.)

The BOCs thus received the Official Services Networks upon the express understanding they would only be used to serve local

and intraLATA customers. Furthermore, subsequent upgrades, maintenance, and depreciation for these networks have been charged against local and intraLATA customers in rate cases, and under price caps, so these customers are entitled to be reimbursed for their funding of this capacity. Accordingly, any decision by an RBOC now to use these networks in order to serve interLATA customers requires that the RBOC's local and intraLATA operations be properly credited with all the revenues attributable to such use.

The Section 272 NPRM expressly recognizes that the Section 272 safeguards are intended, among other goals, "to protect subscribers to BOC monopoly services, such as local telephony, against the potential risk of having to pay costs incurred by the BOCs to enter competitive services, such as interLATA services ...;" emphasis supplied. Clearly, the BOCs would plainly be imposing costs on local ratepayers by foregoing substantial revenue flows to their local and intraLATA operations if they could donate interLATA carriage over their Official Services Networks to their interLATA affiliates. Furthermore, proper charging for any affiliate use of Official Services Networks for interLATA services is critical to prevent "potential improper costs allocations by the BOCs ...;" (Section 272 NPRM at ¶ 12).

Indeed, there is a serious threshold question whether the BOCs can use their Official Services Networks at all for

interLATA service given the clear statutory requirement that such service, except for minor exceptions, can only be provided through an affiliate (Section 272(b)(1) states that the separate affiliate "shall operate independently from the [BOC]"). As the Section 272 NPRM notes (at ¶ 58), similar Computer II maximum separation requirements forced separate unregulated affiliates to obtain underlying transmission facilities from their regulated affiliate only pursuant to tariff.

ALTS believes the statute thus precludes any "common" use by an affiliate of any BOC transmission facilities, including its Official Services Network. However, ALTS does not read the statute to flatly prohibit any interLATA use of existing BOC facilities by affiliates so long as protections similar to Computer II are put in place. If excess interLATA capacity really does exist on the Official Services Networks, it would be economically inefficient not to allow its use in interLATA markets, provided local ratepayers are properly reimbursed for their funding of that excess capacity through rate case adjustments or exogenous changes to price caps.

Assuring that local ratepayers are adequately protected is relatively simple. Where a BOC uses its Official Services Network (which necessarily includes almost all the BOCs' current interLATA facilities, since, prior to passage of the 1996 Act, the Official Services Networks decision provided the BOCs with

virtually their sole authority for carrying any interLATA traffic), the BOC should be required to: (1) charge its affiliate for any interLATA transmission pursuant to tariff, and to disburse those revenues to its local and intraLATA customers under the supervision of its state commissions; and, (2) make those tariffed rates, terms, and conditions available to any non-affiliates.

In order to assure that such tariffs properly reflect market conditions,² BOCs should be required to show that non-affiliates use those tariffs to purchase at least 10% of the total Official Services Network capacity which is purchased by its affiliates.³

² Absent proper safeguards, it would be a simple task for a BOC to create a tariff which only its affiliates could use through onerous duration conditions, service area limitations, etc.

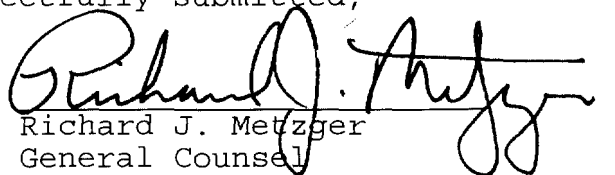
³ The Commission required similar market assurances when it first authorized the BOCs to pay commissions to their non-regulated Centrex sales agents. The BOCs were ordered to make such commissions available to non-affiliated agents, and a reasonable number of such agents was required. American Information Technologies Corp.; Interim Capitalization Plans for the Furnishing of Customer Premises Equipment and Enhanced Services, 98 F.C.C.2d 943, 957 (1984).

CONCLUSION

For the foregoing reasons, ALTS requests that the Commission adopt its proposed non-accounting safeguards under Section 272, including safeguards which will insure that a Bell Company's local and intraLATA customers are properly reimbursed for any use of a BOC's Official Services Network by a long distance affiliate.

Respectfully submitted,

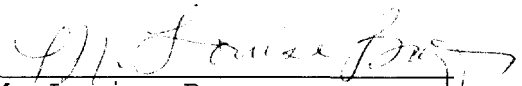
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I hereby certify that the foregoing Further Reply of the Association for Local Telecommunications Services was served April 5, 1996, on the following persons by first-class mail or hand service, as indicated.


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